



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83117; File No. SR-NYSE-2018-14]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section 902.11 of the Exchange's Listed Company Manual Concerning Fees Applicable to Acquisition Companies for Shares Issued Contingent on the Consummation of a Business Combination

April 26, 2018

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 16, 2018, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 902.11. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 102.06 of the Manual provides for the listing of companies ("Acquisition Companies" or "ACs") with no prior operating history that conduct an initial public offering of which at least 90% of the proceeds, together with the proceeds of any other concurrent sales of the AC's equity securities, will be held in a trust account controlled by an independent custodian until consummation of a business combination. The business combination can be in the form of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more operating businesses or assets (a "Business Combination") with a fair market value equal to at least 80% of the net assets held in trust (net of amounts disbursed to management for working capital purposes and excluding the amount of any deferred underwriting discount held in trust). A listed AC may remain listed upon consummation of its Business Combination, provided it meets the criteria specified in Section 802.01B of the Manual.

In the experience of the Exchange, an AC will frequently reconsider its listing venue in

connection with the consummation of its Business Combination.⁴ The Business Combination is a transformative event in the life cycle of an AC, when it becomes an operating company instead of a blank check company. In connection with that transformation, an AC will frequently put in place a new management team and significantly change its board of directors and it will often have a significantly different shareholder base after the Business Combination than it had as an AC. In effect, an AC after its Business Combination is a completely different company and it is for this reason that the board and management of the company after the transaction would want to reconsider the positioning of the company in many respects, including its listing venue.

The market for the retention or transfer to another exchange of these companies is very competitive and a number of transfers to a new listing venue have occurred in recent times in connection with the completion of an AC's Business Combination. The listing rules of the Exchange,⁵ NYSE American⁶ and NASDAQ Stock Market⁷ all provide for a waiver of all initial listing fees in connection with a transfer from another national securities exchange, so an AC moving its listing upon consummation of its Business Combination never has to pay any listing fees in connection with such transfer or the issuance of any new shares at the time of its Business Combination. However, until a recent amendment to Section 902.11 of the Manual,⁸ an AC remaining listed on the Exchange upon consummation of its Business Combination had to pay additional listing fees in relation to any additional shares issued in connection with the Business

⁴ The Exchange began to list ACs on a regular basis in the last year, so the practice of ACs changing listing venue at the time of their Business Combination has not yet involved any companies transferring away from the NYSE in those circumstances.

⁵ See Section 902.02 of the Manual.

⁶ See Section 140 of the NYSE American Company Guide.

⁷ See NASDAQ Marketplace Rule 5910(7) [sic].

⁸ See Securities Exchange Act Release No. 82731 (February 16, 2018), 83 FR 8140 (February 23, 2018) (SR-NYSE-2018-06).

Combination. In such instances, the AC was faced with the anomalous situation where there would be no listing fee burden associated with a transfer to another exchange but it would be required to pay significant additional listing fees if it remained on its incumbent exchange. Consequently, to eliminate this disparate treatment of companies listing after a Business Combination, the Exchange amended Section 902.11 of the Manual to provide that any AC remaining listed on the Exchange upon consummation of its Business Combination would no longer be subject to any additional listing fees with respect to any shares issued in connection with such Business Combination.

The Exchange has identified another anomaly in the fees payable by an AC if it chooses to remain on the NYSE at the time of its Business Combination rather than transfer to another exchange. The Exchange has observed that it is not uncommon for an AC to seek to raise capital by selling shares in a private placement in conjunction with the consummation of its Business Combination. This additional capital is needed to provide sufficient liquidity for the AC to successfully operate its new business after the Business Combination. The private placement generally closes at the same time as the consummation of the Business Combination and the closing of the private placement is contractually conditioned on such consummation. Under current Exchange rules, the AC would be required to pay listing fees with respect to the shares issued in any such private placement. By contrast, if the AC chose to transfer to another listing venue at the time of consummation of its Business Combination, the other market would charge no listing fees on those shares as they would be subject to the listing fee exemption all of the markets apply to any shares outstanding at the time of transfer. As this anomaly would impose a cost on the AC if it remained on the NYSE where none would be incurred if the company chose to transfer, the Exchange proposes to amend Section 902.11 to provide that ACs remaining listed

after consummation of their Business Combination will not be required to pay listing fees in relation to the issuance of any additional shares in a transaction which is occurring at the same time as the Business Combination with a closing contractually contingent on the consummation of the Business Combination.⁹

The Exchange does not expect the revenues it forgoes as a result of the proposed waiver to negatively affect its ability to conduct its regulatory program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4)¹¹ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges and is not designed to permit unfair discrimination among its members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act, in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with Sections 6(b)(4)

⁹ The Exchange believes that it is appropriate to provide this waiver to an AC at the time of its Business Combination and not to an operating company that would also be subject to additional listing fees in connection with a share issuance subsequent to listing. In the Exchange's experience, there is generally no parallel to the Business Combination in the life cycle of an operating company that would cause it to reconsider its listing venue at the time it issued additional shares, so the anomaly the Exchange seeks to address in relation to ACs is not relevant to operating companies.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

and 6(b)(5) of the Act in that it represents an equitable allocation of fees and does not unfairly discriminate among listed companies. In particular, the Exchange notes that the proposed amendment is not unfairly discriminatory as it will result in an AC that remains listed on the Exchange after its Business Combination being treated the same as an AC that transfers to the Exchange from another listing venue. The Exchange also believes the proposed rule change is not discriminatory with respect to listed operating companies, as operating companies generally do not have an event in their life cycle parallel to the Business Combination for an AC which would normally give rise to a reconsideration of the company's listing venue.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The proposed rule change does not impose any burden on competition, as it will have the effect of treating an AC that remains listed on the Exchange after its Business Combination the same for fee purposes as an AC that transfers to the Exchange from another listing venue or transfers to another listing venue at that time.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹² of the Act and subparagraph (f)(2) of Rule 19b-4¹³ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2018-14 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2018-14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

¹⁴ 15 U.S.C. 78s(b)(2)(B).

proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2018-14, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Eduardo A. Aleman,
Assistant Secretary.

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¹⁵ 17 CFR 200.30-3(a)(12).

